

Congress of the United States
Washington, DC 20515

September 28, 2018

The Honorable Betsy DeVos
Secretary of Education
United States Department of Education
400 Maryland Avenue, SW, Room 7W301
Washington DC, 20202

Dear Secretary DeVos:

As Members of Congress committed to protecting the workplace rights of Department of Education employees, including our constituents who work in regional offices, we write to express alarm over the Department's unilateral adoption of a new "Collective Bargaining Agreement" on March 9, 2018 (Management Edict).

Specifically, we are troubled by reports that the policies the Department plans to implement on October 1, 2018 will limit the ability of employees to conduct their work and already has led to the departure of talented employees.

This is especially concerning due to the potential impact on the Department's Office for Civil Rights (OCR), which is already understaffed, given OCR's critical role in preventing discrimination in education, including sex discrimination and sexual violence.

We urge the Department to prioritize the hiring and retention of OCR employees. We also strongly encourage the Department to rescind the Management Edict and return to the bargaining table with the American Federation of Government Employees (AFGE) to negotiate a new lawful agreement.

All students have the right to learn in a safe environment and OCR employees are at the forefront of the fight against discrimination, harassment, and sexual violence in education. However, the ability of OCR to conduct its critical work has declined under the current Administration and will continue to do so if the Management Edict goes into effect. The number of full-time employees (FTEs) at OCR has dropped from approximately 579 in Fiscal Year (FY) 2017 to 529 in FY 2018, while caseloads per FTE have increased¹.

Additionally, an early copy of your FY 2019 Budget Request included a proposal to cut the number of OCR regional offices². Such closures would have had an extremely detrimental

¹ Department of Education, Office for Civil Rights, *Fiscal Year 2016 Budget Request* (online at www2.ed.gov/about/overview/budget/budget16/justifications/aa-ocr.pdf); Department of Education, Office for Civil Rights, *Fiscal Year 2018 Budget Request* (online at www2.ed.gov/about/overview/budget/budget18/justifications/z-ocr.pdf).

² *As DeVos Faces Congress, Officials Say She Hid Plans to Overhaul Department*. New York Times (Mar. 20, 2018) (online at www.nytimes.com/2018/03/20/us/politics/education-secretary-devos-reorganization-plan-union.html?rref=collection%2Fbyline%2Feric-l-green&action=click&contentCollection=undefined®ion=stream&module=stream_unit&version=latest&contentPlacement=3&pgtype=collection&mtref=www.nytimes.com).

effect on OCR's ability to enforce our critical educational civil rights laws. Fortunately, Congress stopped this move by including language in the Consolidated Appropriations Act of 2018 that prohibited the Department from closing any of OCR's 12 regional offices³.

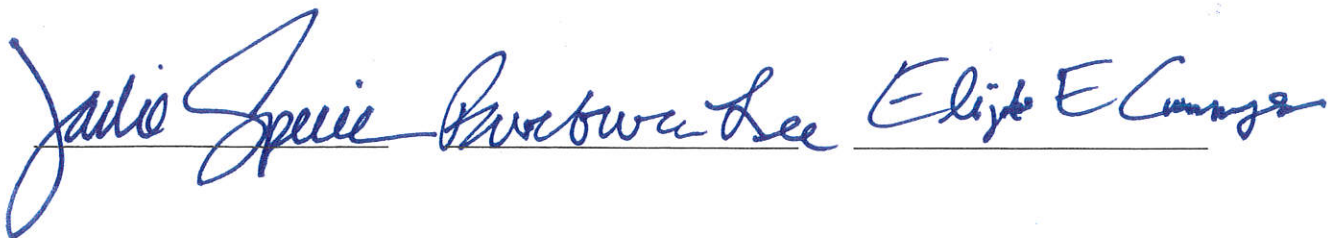
Despite Congress's clear directive in the Act, the Department's move to step away from the bargaining table and rescind flexible work policies via the Management Edict has already had the effect of driving out talented OCR employees. The Department's actions strongly suggest an attempt to circumvent congressional intent.

In addition to depriving AFGE of its ability to negotiate changes in employable conditions, the Management Edict also prohibits Union representatives from using official time to meet their statutory representational duties. Union locals have also been evicted from their office space and had their equipment confiscated by the Department.

In July 2018, the Federal Labor Relations Authority (FLRA) investigated and subsequently advised the Department that the imposition of the Management Edict constituted a failure to bargain in good faith with AFGE, in violation of federal law⁴. Additionally, in August 2018, the U.S. District Court for the District of Columbia further invalidated key provisions of the President's May 2018 Executive Orders concerning official time, collective bargaining, and employee rights⁵. In light of these rulings, it is even more imperative that the Department withdraw the Management Edict and return to the bargaining table with AFGE.

We strongly believe that it is in the best interest of our nation's students to retain talented employees at the Department, including at OCR, to be able to continue the critical work of investigating civil rights violations related to discrimination, harassment, and sexual violence. For this reason, we urge you to negotiate in good faith with AFGE on a fair and equitable contract that protects employee rights.

Sincerely,

A handwritten signature in blue ink, reading "Jodie Spivey Burdwan Lee Ellyse E. Conway". The signature is written in a cursive, flowing style.

³ Explanatory Statement Submitted by Mr. Frelinghuysen, Chairman of the House Committee on Appropriations, Regarding House Amendment to Senate Amendment H.R. 1625 (Consolidated Appropriations Act, 2018), Congressional Record, H2697 (Mar. 22, 2018) (online at www.congress.gov/crec/2018/03/22/CREC-2018-03-22-bk3.pdf); *As Civil Rights Office Gets More Money, It Limits Investigations*, Inside Higher Ed (Mar. 30, 2018) (online at www.insidehighered.com/news/2018/03/30/more-money-civil-rights-office-comes-it-narrows-its-investigative-work).

⁴ *Education Dept. Illegally Curbed Workers' Union Protections, Mediators Suggest*, New York Times (July 24, 2018) (online at www.nytimes.com/2018/07/24/us/politics/labor-rules-education-department-betsy-devos.html).

⁵ *Judge Invalidates Key Part of Trump's Executive Orders on Unions*, NPR (Aug. 25, 2018) (online at www.npr.org/2018/08/25/641942448/judge-invalidates-key-parts-of-trumps-executive-orders-on-unions).

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